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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 JEREMY MEYERS,

10  
11 Petitioner,

12 v.

13 MAGGIE MILLER-STOUT,

14 Respondent.

No. C08-5773 FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION DISMISSING  
HABEAS CORPUS PETITION AS  
UNTIMELY

15 This matter comes before the Court on the Report and Recommendation of the Magistrate  
16 Judge that Petitioner's request for habeas corpus relief be denied and the petition be dismissed  
17 with prejudice. As detailed by the Magistrate Judge, Petitioner's filed his habeas corpus petition  
18 subsequent to the expiration of the statute of limitations, 28 U.S.C. § 2244(d), and there exist no  
19 basis for equitable tolling.  
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21 Petitioner has filed an objection asserting that the federal statute of limitations was tolled  
22 until the issuance of a certificate of finality on March 27, 2009, thereby making this petition  
23 timely filed. This assertion lacks merit. State post-conviction appeals toll the federal one-year  
24 limitations period only until denial of review by the state supreme court, and not until the  
25 subsequent entry of a mandate by the clerk of the intermediate appellate court. *Harris v. Carter*,  
26 515 F.3d 1051, 1053 (9<sup>th</sup> Cir. 2008); *see also White v. Klitzkie*, 281 F.3d 920, 923-24 n. 4 (9<sup>th</sup>

1 Cir. 2002). This habeas corpus petition is, therefore, barred by the one-year statute of limitations  
2 unless grounds for equitable tolling exist. Petitioner argues that he has not had the opportunity to  
3 gather factual evidence to support the application of equitable tolling. Petitioner has not  
4 presented any evidence that Respondent's conduct impeded Petitioner's ability to file his petition  
5 in a timely manner.

6 The Court, having reviewed the petition for writ of habeas corpus, the response, the  
7 Report and Recommendation of Magistrate Judge Karen L. Strombom, and the remaining record,  
8 does hereby find and ORDER:  
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- 10 (1) The Court adopts the Report and Recommendation;
- 11 (2) Petitioner's writ of habeas corpus [Dkts. 5 and 9] is **DENIED** and this action is  
12 **DISMISSED WITH PREJUDICE**; and
- 13 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for  
14 Respondent and to the Hon. Karen L. Strombom.

15 DATED this 28<sup>th</sup> day of October, 2009.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE